

roads or highways herein before specified shall be deemed to have been compensated or released. But all roads or highways established by this act shall be subject to be altered or vacated the same as other roads.

Security for com-
pensation.

SEC. 7. The provisions of this act providing for the determination and payment of compensation to the owners of land for the right of way over the same shall be deemed, and are hereby declared to be good and sufficient security to such owners, their successors or assigns, for the payment of such compensation within the intent and meaning of section thirteen of article one of the constitution of this state.

When act to take
effect.

SEC. 8. This act shall take effect on the first day of April, eighteen hundred and seventy-four.

Approved March 9, 1874.

CHAPTER LVII.

AN ACT TO AUTHORIZE THE BOARD OF TOWN SUPERVISORS TO OPEN, LAY OUT AND CONSTRUCT DITCHES FOR THE PURPOSE OF DRAINING PUBLIC HIGHWAYS.

Be it enacted by the Legislature of the State of Minnesota :

Overseer of high-
ways to make
and file affidavit
when necessary
to ditch swampy
or low lands with
board of supervi-
sors.

SECTION 1. Whenever any overseer of highways shall file with the chairman of the board of supervisors of the town in which his road district is located, his affidavit stating that a certain road passing through or into the district of which he is overseer, runs into or through swamp, bog or meadow or other low land, and that it is necessary or expedient that a ditch or ditches should be opened through land belonging to any person, stating the probable length of such ditch or ditches, and the width and depth of the same, as near as possible, the point at which it is to commence, its general course, and the point near which it is to terminate, and the names of persons owning the land, if known, and a description of the land over which said ditch or ditches must pass, and that the road at that point cannot be made passable without extraordinary expense, unless such ditch or ditches are

laid out and opened. Thereupon it shall be the duty of the chairman of the board of supervisors immediately to make out a notice and fix therein a time not less than six nor more than sixty days from the date thereof. The board of supervisors will meet at the place described in said affidavit, and personally examine the premises; which notice, together with the affidavit, he shall cause to be filed in the office of the town clerk, and the clerk shall make true copies of said notice and deliver them to the overseer of highways making the affidavit, whose duty it shall be to personally serve the same upon each of the owners of the land, if residents of the county, or upon the occupants of the land if the owners are not residents of the county through which it is proposed to open such ditch or ditches, which notice may be in the following form:

Duty of chairman board of supervisors.

State of Minnesota, county of _____ Mr. _____
 Notice is hereby given, that, whereas it appears by the affidavit of overseer of road district No. _____ in the town of _____, that the road running from _____ to _____ runs into or passes through a swamp, bog, [pond] or low land, which swamp, bog, pond or low land is situated on section _____, in said town, and that it is the opinion of said overseer that a ditch or ditches should be opened through land belonging to _____, for the purpose of draining said swamp, therefore you are hereby notified that the board of town supervisors will, on the _____ day of _____, A. D. 18—, personally examine the premises over which said ditch or ditches are to pass, and decide upon said application, and will also hear any objections which may be made in the matter, and will consider the amount of damages which, in their opinion, will be just compensation to the owners of land in consequence of the opening of such ditch or ditches. Signed, _____ chairman of the board of supervisors, _____ clerk of town of _____. *Provided*, That such ditch or ditches shall be laid out upon the lines that the owner or owners of the land over which they are to pass may desire, whenever it can be so done without extra cost.

Form of notice.

SEC. 2. The overseer serving such notice shall make return thereon to the town clerk, stating the facts, and if it shall appear from the return of the overseer that the owners of said lands do not reside in the county, and that no occupant resides thereon, the town clerk shall order the publication of the notice for three successive weeks

When notice to be published.

in a newspaper printed and published in said county, or if there be no paper printed and published in said county, then he shall post or cause to be posted up the notice in three of the most public places in the county, for three weeks prior to the meeting of the supervisors, and such publication shall be considered as sufficient notice to all parties.

Examination of road.

SEC. 3. At the time specified in the notice the supervisors shall proceed to examine the road and premises over which such ditch must pass, and hear any reasons for or against laying out the same, and shall decide upon the application as they deem proper, and shall assess the amount of damages which in their judgment will be an equitable compensation to the owners of the land for the opening of said ditch or ditches through their land, and in all cases they shall estimate the advantage and benefits the laying out and opening of such ditch or ditches will confer upon the owner of any land through which such ditch may run, as well as the disadvantages. *Provided*, The damages sustained by reason of laying out and opening such ditch or ditches may be ascertained by the agreement of the owners and the supervisors, in which case every agreement and release shall be in writing, and filed in the town clerk's office, and shall forever preclude such owners of lands from all further claims for damages.

Damages how ascertained.

To cause low land to be ditched.

SEC. 4. If, after taking all the circumstances into consideration, the supervisors shall be satisfied that the opening of such ditch or ditches is necessary or advantageous to the public interest, they shall cause the same to be laid out and opened, and shall give such directions in the matter as shall be necessary for the effectual draining of said swamp, pond, bog or low land, and shall file a statement in writing of all their doings, including the amount of damages allowed, in the office of the town clerk, who shall copy the same into a book to be kept by him especially for that purpose; and if the order and proceedings be not appealed from within ten days from the filing thereof, as hereinafter provided for, then said judgment, order and findings shall be final, and the overseer may proceed to open the ditch or ditches, in accordance with the directions and under the instructions of the said board of supervisors.

Right of appeal.

SEC. 5. Any party through whose land said ditch shall pass may appeal from the decision of the supervisors to

the district court of the county in which the premises are situated, by filing with the town clerk within ten days after the decision of the supervisors shall have been made and filed, a recognizance of the appellant, with sureties to be approved by the said board or chairman, in a sum not less than one hundred dollars, conditioned that the appellant will appear at the next term of the district court, and prosecute his suit to final judgment, if the court shall not otherwise order for good cause; and further, that he will abide the decision of the court, and pay all costs and damages that may be assessed against him therein; or, if the appeal shall be dismissed or discontinued, that he will pay the costs of appeal. The proceedings of the district court in the appeal shall be the same as an appeal in civil action from a justice of the peace, as nearly as practicable, and costs shall be awarded for or against either party in the same manner as upon an appeal in civil actions.

SEC. 6. At any time after such ditch or ditches shall have been opened, it shall be lawful for the overseer of highways of the road district, from time to time as it may become necessary, to enter upon the lands through which such ditch or ditches have been opened, for the purpose of clearing out and scouring the same, and then and there to clear and scour the same, in such manner as to keep them open and in good order and condition.

Ditches to be kept open.

SEC. 7. Any person who shall dam up, obstruct, or in any way injure any ditch or ditches as opened, shall be liable to pay to the overseer of highways of such road district, double the damages which shall be assessed by the jury or court trying the case for such injury, and shall further be deemed to have committed a misdemeanor, and shall, upon conviction thereof, be punished by imprisonment of not more than three months, or by fine of not more than one hundred dollars, and such sums of damages and fines shall be by such overseer expended on the roads in his district.

Penalty for obstructing ditches.

SEC. 8. When the amount of damages or compensation to be paid by [to] any one or more of the owners of land taken for such ditch or ditches shall have been finally determined by proceedings under the provisions of this act, the board of town supervisors shall provide for the payment of and pay the same in the manner provided by law for the payment of like damages or compensation for land taken for a public highway, and may in their dis-

Provision for payment of damages.

cretion deduct the amount so paid from money belonging to or to be paid over to the road district in which such ditch or ditches shall have been constructed.

Exceptions.

SEC. 9. The county of Winona is excepted from the provisions of this act.

When act to take effect.

SEC. 10. This act shall be in force and take effect from and after its passage.

Approved March 2, 1874.

CHAPTER LVIII.

AN ACT PROVIDING FOR LAYING OUT SIDE ROADS AND FORD CROSSINGS, AND TO PREVENT OVER-CROWDING CATTLE WHILE CROSSING BRIDGES.

Be it enacted by the Legislature of the State of Minnesota :

Authorized to lay out side roads and ford crossings.

SECTION 1. The board of county commissioners of each county in this state, shall have power and authority to lay out and establish side roads and ford crossings near or adjacent to any bridge forming part of any county or town road, over any stream of water in their county ; said side road on each side of said stream of water to intersect with the adjacent road at the nearest practicable point. In the laying out and establishing such side road and ford crossings, the same proceedings shall be had in all respects including the assessment and payment of damages as are required by law in laying out and establishing county roads ; *Provided*, That this act shall not authorize the laying out and establishing side roads or ford crossings near or adjacent to any bridge, the cost of which was less than one thousand dollars.

Regulating the number of cattle to be driven over bridges.

SEC. 2. It shall be the duty of the county commissioners of each and every county in this state to cause notices to be posted at both ends of all bridges in their respective counties, where the span of such bridge shall be fifty feet or more, stating the number of cattle, horses or other animals that may be driven on, to or across said bridge at any one time.

SEC. 3. Any person or persons driving or having